IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WP(C).No. 7702 of 2006(P)

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PETITIONER:

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REKHA P.R., W/O.RAJEEV, AGED 32 YEARS,
PANIKASSERYIL HOUSE, KANNOR, NALUKETTU P.O.,
THRISSUR.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

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1. THE KORATTY SERVICE CO-OPERATIVE BANK LTD. NO.390, KORATTY P.O., REP BY ITS SECRETARY.

2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), THRISSUR.

GOVERNMENT PLEADER SRI.P.K. RAVIKRISHNAN
BY ADV. SRI.T.R.RAMACHANDRAN NAIR FOR R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).7702/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF JUDGMENT IN W.P.(C).39026/2002 DATED 24.9.03

EXT.P2- TRUE COPY OF JUDGMENT IN W.A.NO.83/04 DATED 19.5.05

EXT.P3- TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 29.6.03

EXT.P4- TRUE COPY OF THE JUDGMENT IN W.P.(C).28989/05 DATED 15.10.05.

EXT.P5- TRUE COPY OF THE STATEMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 14.1.2006.

EXT.P6- TRUE COPY OF THE STATEMENT FILED OBY THE FIRST RESPONDENT DATED 16.11.2005

EXT.P7- TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 25.1.2006.

RESPONDENT'S EXHIBITS:-

EXT.R1(a)- TRUE COPY OF THE RESOLUTION NO.16 DATED 20.7.2005

EXT.R1(b)- TRUE COPY OF THE BALANCE SHEET FOR THE YEAR 2003-04

EXT.R1(c)- TRUE COPY OF THE RELEVANT PAGES OF THE AUDIT REPORT FOR THE YEAR 2003-04.

(TRUE COPY)

P.A TO JUDGE

**J.M.JAMES, J.**

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W.P.(C). 7702/2006

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Dated this the 18th day of December, 2006

**JUDGMENT**

A person by name K.G.Suma was promoted from the post of peon to clerk, in the first respondent, bank. In the vacancy thus arose, the writ petitioner, Rekha P.R., was appointed as peon, as she was the third rank holder in the list, published for the appointment to the two vacancies of the peon, in the bank. However, the appointment of K.G.Suma as clerk was objected to, as the promotion was not in order. Therefore, she was reverted to the post of peon. Thus, there was no vacancy of the peon. Accordingly, the writ petitioner was trenched.

2. She approached this Court through O.P.No.39026/2002, challenging the retrenchment. Under Ext.P1 judgment dated 24.9.2003, O.P was disposed of, directing the first respondent, bank, to consider the claim of the writ petitioner for appointment, as and when the vacancies arise in future, to the cadre of peon. It is also directed that if the petitioner had any grievance that there is a vacancy and still she is being denied the employment,

she will be free to move the Joint Registrar of Co-operative Societies seeking appropriate relief.

3. The bank had challenged the judgment of the learned single Judge, through W.A.No.83/2004. The Writ Appeal was disposed of holding that the learned single Judge gave only a direction to consider the request of the Original Petitioner, as and when the vacancy arose. Thereafter, the second respondent, the Joint Registrar, passed an order dated 25.1.2006, directing the bank to appoint the writ petitioner to the cadre of peon, as and when such vacancy arise. Nevertheless, the bank had not passed any order appointing the petitioner, on the plea that as per the audit report the bank is running into huge loss. Therefore, further establishment charges cannot be incurred by making fresh appointments. Because of a decision of the managing committee dated 20.7.2005, so far the writ petitioner had not been appointed.

4. The grievance of the writ petitioner is that K.G.Suma had been promoted to the post of clerk and, therefore, there is a vacancy of peon. It is also submitted

by the learned counsel for the writ petitioner that different persons are being engaged in daily wages, spending huge amount from the establishment and, therefore, refusal of the bank to appoint the writ petitioner is against the order of the Joint Registrar. Hence, it is prayed that a positive direction may be given to appoint the writ petitioner in the existing vacancy of peon in the first respondent, bank.

5. I heard the arguments advanced by the learned counsel for the first respondent, bank. It is submitted relying on Exts.R1(a) and R1(b), that because of the audit objection showing that there is a huge loss to the first respondent, bank, and also, the installation of computers in the bank, for its day to day administration, fresh incumbents are not necessary to be appointed. Therefore, relying on the resolution of the managing committee of the bank dated 20.7.2006, the learned Standing Counsel submits that no peon is need to be appointed. It is also explained by the Standing Counsel that the appointments on daily wages are just to do the bare minimum work of the administration and no

permanent appointments are made. Hence, he submits, the writ petitioner cannot be appointed.

6. I had gone through the entire materials that are placed before me. In the writ petition itself, the petitioner gave the details of the persons employed on daily wages. It is not denied that on promotion of K.G.Suma, vacancy of peon is existing in the first respondent, bank. The Joint Registrar had already passed a direction to consider the appointment of the writ petitioner, as and when a vacancy arise in the first respondent, bank. Therefore, there is a clear direction to appoint the writ petitioner. In **Peirce Leslie India Ltd. v. Secretary, C.I.T.U. (2006 (1) KLT 869),** the Division Bench of this Court had clearly laid down that the right of the retrenched workman for a re-employment is statutorily recognised.

7. The argument of the learned Standing Counsel that because of the heavy loss incurred by the bank, the petitioner cannot be appointed, is un-acceptable for, there are number of persons being appointed on daily wages. In Ext.P1 judgment, the

learned single Judge had directed the writ petitioner to approach the Joint Registrar when the employment is denied to her by the bank, when there is vacancy. Now, the facts clearly reveal, there is a vacancy of peon. The Joint Registrar had already directed to consider the writ petitioner, for appointment, when the vacancy arise. Merely because of an audit objection, legitimate appointment of the writ petitioner cannot be kept aside, particularly when there are persons employed in the bank on daily wage basis.

8. In the above facts situation, I direct the first respondent, bank, to pass orders appointing the writ petitioner, as peon in the bank, within one month from today.

The writ petition is disposed of as above.

**J.M.JAMES**
**JUDGE**

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